CLAIM FOR COMPENSATION
UNDER BALLOT MEASURE 37
AND METRO CODE CHAPTER 2.21

REPORT OF THE METRO CHIEF OPERATING OFFICER

In Consideration of Council Order No. 06-003
For the Purpose of Entering an Order
Relating to the Measure 37 Claim of Nick Stearns

May 12, 2006

METRO CLAIM NUMBER:	Claim No. 06-002
NAME OF CLAIMANT:	Nick Stearns
MAILLING ADDRESS:	Stearns Marnella Communities Attn: Nick Stearns 18318 SE Abernethy Lane Milwaukie, OR 97267
PROPERTY LOCATION:	19992 S. South End Road Oregon City, OR 97045
LEGAL DESCRIPTION:	T3S R1E Section 11 Tax Lot 1191 & T3S R1E Section 11 Tax Lot 1101
DATE OF CLAIM:	July 12, 2005
180-DAY PROCESSING DEADLINE:	January 9, 2006

I. CLAIM

Claimant Nick Stearns seeks compensation in the amount of $500,000 for a claimed reduction in fair market value of property owned by the claimant as a result of enforcement of Metro Code Section 3.07.1110 C of Title 11. In lieu of compensation, claimant seeks a waiver of that regulation so claimant can apply to Clackamas County to divide the 21.4-acre subject property into a maximum of 4 lots and develop a single family dwelling on each lot that does not already contain a dwelling.

The Chief Operating Officer (COO) sent notice of date, time and location of the public hearing on this claim before the Metro Council on May 12, 2006. The notice indicated that a copy of this report is available upon request and that the report is posted on Metro's website at www.metro-region.org.

II. SUMMARY OF COO RECOMMENDATION

The COO recommends that Metro Council deny the claim for the reasons explained in section IV of this report. The facts and analysis indicate that Metro's action to bring claimant's land into the Urban Growth Boundary (UGB), designate it Outer Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the fair market value of claimant's property.

III TIMELINESS OF CLAIM

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from a land use regulation enacted *prior* to the effective date of Measure 37 (December 2, 2004), within two years of that date, or of the date a public entity applies the regulation to the property as an approval criterion in response to an application submitted by the owner, whichever is later; or

2. For claims arising from a land use regulation enacted *after* the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the regulation, or of the date the owner of the property submits a land use application for the property in which the regulation is an approval criterion, whichever is later.

<u>Findings of Fact</u>
The claimant submitted this claim on July 12, 2005. The claim identifies Metro Code section 3.07.1110 C as the basis of the claim. The Metro Council added the regulation that gives rise to this claim on September 10th, 1998 by Ordinance 98-772B, prior to the effective date of Measure 37 (December 2, 2004).

<u>Conclusions of Law</u>
Metro adopted the regulation that gives rise to this claim prior to the effective date of Measure 37. The claim, therefore, is timely.

IV. ANALYSIS OF CLAIM

<u>1. *Ownership*</u>
Metro Code section 2.22.020(c) defines "owner" to mean the owner of the property or any interest therein. "Owner" includes all persons or entities who share ownership of a property.

<u>Findings of Fact</u>
The claimant acquired an ownership interest in the subject property on July 15, 1998, and has had a continuous ownership interest since that date. Attachment 1 is a site map of the subject property showing the location of the existing residence, topography and high voltage utility line easement and two sets of utility lines that run east-west through the upper 1/3 of the property (ATTACHMENT 1).

<u>Conclusions of Law</u>
The claimant, Nick Stearns, is an owner of the subject property as defined in the Metro Code.

2. Zoning History
The property was zoned Rural Residential/Farm-Forest-5 (RRFF-5), five-acre minimum lot size in 1979 by Clackamas County. The RRFF-5 zone was amended on January 30, 2003 to include a prohibition on lot divisions within the Metro Urban Growth Boundary (UGB) resulting in the creation of one or more lots of less than 20 acres in size (Zoning and Development Ordinance 309.07D).

3. *Applicability of a Metro Functional Plan Requirement*

Findings of Fact
In 2002, Metro Council expanded the UGB by adopting Ordinance No. 02-969B, including the claimant's property in the UGB expansion area.

Section 3.07.1110 C of Metro's Code prohibits any division of land into lots or parcels smaller than 20 acres, except for public schools or other urban services, pending adoption of urban comprehensive plan designations and zoning.

Clackamas County adopted Order No. 2005-220 on August 3rd, 2005, waiving certain of the County's land use regulations, allowing the claimant to apply to divide his property into 5-acre lots, consistent with RRFF-5 zoning. The County's Order No. 2005-220 does not waive or otherwise affect lot size or other regulations to the property adopted by Metro. The Order indicates that Metro will have to evaluate the claim due to Metro's interim 20-acre minimum lot size requirement in Metro Code Section 3.07.1110C.

Conclusions of Law
Section 3.07.1110 C of the Metro Code applies to the subject property and became applicable after the claimant acquired the property. Thus, the section did not apply to the subject property at the time claimant acquired it. The section does not allow the claimant to partition or subdivide his 21.4-acre property. The claimant would have been able to apply to Clackamas County to create up to four 5-acre parcels and develop a single family dwelling on each lot (that did not already contain a dwelling) when he acquired the property in 1998.

4. *Effect of Functional Plan Requirements on Fair Market Value*

Findings of Fact
Section 2.21.040(d)(5) requires the Chief Operating Officer (COO) to determine whether the temporary 20-acre minimum size for the creation of new lots or parcels applicable to territory newly added to the UGB has reduced the value of claimant's land. The COO's conclusion is based upon the analysis of the effect of Metro's action contained in the attached memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel dated May 11, 2006 (Conder Memo).

The claimant has submitted comparable sales data to support his assertion that the temporary 20-acre minimum size has reduced the value of his property by $500,000. Claimant asserts that the property's current fair market value (FMV), with the temporary 20-acre minimum size in place, is $400,000-450,000. Claimant further asserts that a five-acre parcel for a homesite has a current FMV of $250,000. Because county zoning at the time claimant purchased the land allowed creation of five-acre homesites, claimant then multiplies $250,000 times the number of homesites he could have created (three homesites, with one lot remaining under the existing dwelling), giving a value of $750,000. To this value claimant adds $300,000 for the value of a five-acre property with the current house, yielding a total FMV of $1,050,000. From this amount the claimant subtracts $100,000 for development costs of the lot divisions. These adjustments yield a net FMV of $950,000. Finally, claimant subtracts the $400,000-450,000 FMV of the *regulated* property from the $950,000 net FMV of the *unregulated* property to derive the asserted net reduction in FMV of at least $500,000.

The Conder Memo analyzes the claimant's information and applies two different methods for determining the effect of Metro's action on the value of claimant's property.

A. <u>"Comparable Sales" Method</u>

This method compares the value of the property in its current regulatory setting with its value today as though Metro's action had not happened. The current regulatory setting is as follows: by Ordinance No: 02-969B, Metro (1) added the property to the UGB; (b) designated the property with the "Outer Neighborhood" 2040 Growth Concept design type designation; and (3) applied a temporary 20-acre minimum lot size to preserve the status quo while the city of Oregon City completes the comprehensive planning necessary to allow urbanization of the previously rural (outside the UGB) land. Had Metro's action not happened, the property – given the waiver by Clackamas County in Order No. 2005-220– would be outside the UGB under Clackamas County zoning of RRFF-5 (Rural Residential/Farm-Forest, five-acre minimum lot size) (zoning on date of claimant's purchase of property, 1998).

The estimates of FMV claimant provides, for reasons explained in the Conder Memo, do not accurately reflect values with or without Metro's regulatory action. Data generated by Metro's Data Resource Center and analyzed in the Conder Memo provide an accurate assessment of values.

Table 4 of the Conder Memo compares today's FMVs of the property with and without Metro's action, adjusting in all cases for costs of development and limitations on development of the site that a prudent investor would take into account. The comparison offers a range of lots and lot sizes to reflect the lack of precise information about site limitations. The table shows that the most conservative assumptions about value under the Outer Neighborhood designation inside the UGB exceed the highest value under RRFF-5 zoning outside the UGB. With less conservative assumptions, the value under the Outer Neighborhood designation greatly exceeds the value under RRFF-5 zoning.

B. <u>The Plantinga/Jaeger Method</u>

This method assumes that claimant's purchase price in 1998 accurately reflected the development opportunities allowed by the RRFF-5 zoning that then applied. The method "indexes" that value to the present and compares the indexed value with today's value with the regulation in question. If the indexed value of the purchase price exceeds the value of the property in today's regulatory setting, the regulation has reduced the value of a claimant's property.

The Conder Memo applies this method using the claimant's purchase price of $300,000 (data submitted with the claim indicate the property was conveyed as a Deed of Trust in 1998 for $10.00. Value of the property at the time was estimated at $300,000). The memo uses four different indices to measure the increase in the value of the property over time. Table 3 shows that, regardless of the index chosen, the value of claimant's property under today's regulations exceeds the indexed value.

Conclusion
The facts and analysis indicate that Metro's action to bring claimant's land into the UGB, designate it Outer Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the FMV of claimant's property.

5. Exemptions under ORS 197.352(3)

Findings of Fact
Section 3.07.1110 C of the Metro Code does not restrict or prohibit a public nuisance, the selling of pornography or nude dancing, is not intended to protect public health or safety, and is not required to comply with federal law.

Conclusions of Law
Section 3.07.1110 C of the Metro Code is not exempt from Measure 37 under ORS 197.352(3).

6. Relief for Claimant

Findings of Fact
The Metro Council has appropriated no funds for compensation of claims under Measure 37. Waiver of Metro Code Section 3.07.1110 C to the subject property will allow the claimant to apply to Clackamas County to divide the subject property into four parcels and to develop a single family dwelling on each lot that does not already contain a dwelling. The effect of development as proposed by the claimant will be to reduce the residential capacity of the city of Oregon City and of the UGB. It will also make provision of urban services less efficient and more complicated.

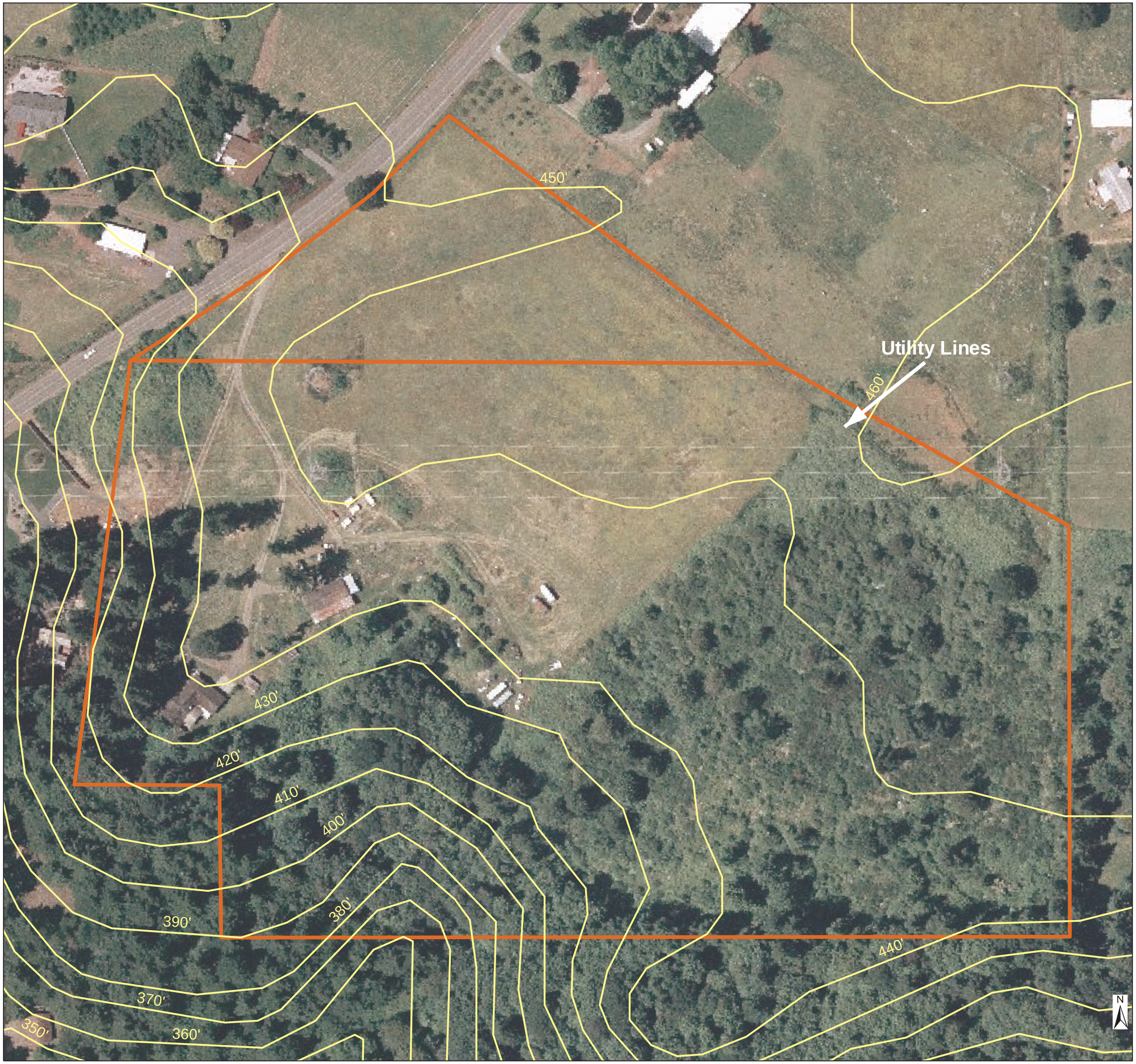
Conclusions of Law
Based on the record, the claimant has not established that he is entitled to relief in the form of compensation or waiver of the interim 20-acre minimum lot size requirement under Metro Code Section 3.07.1110 C.

ATTACHMENTS TO THE REPORT OF THE CHIEF OPERATING OFFICER

Attachment 1: Site Map of Nick Stearns Property

Attachment 2: Metro Memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel, “Valuation Report on the Nick Stearns Measure 37 Claim,” dated May 11, 2006

Attachment 3: Sample Area of 2004-2005 Sales Data for Damascus UGB Expansion Area and One Mile Buffer, Clackamas County, OR



R L I S

REGIONAL LAND INFORMATION SYSTEM

Council Order #06-003
Attachment 1

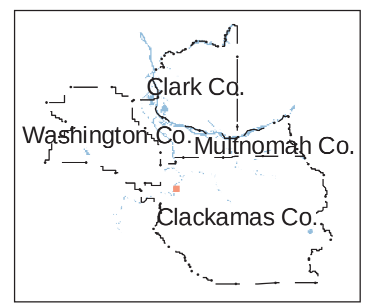
Site Map Stearns Measure 37 Claim

Subject Property

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

1 inch equals 0.04 miles

Feet
0 50 100



Location Map

METRO

METRO DATA RESOURCE CENTER
600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232-2736
TEL (503) 797-1742 | FAX (503) 797-1909
drc@metro.dst.or.us | www.metro-region.org

M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1794

METRO

May 11, 2006

To: Paul Ketcham, Principal Regional Planner
Richard Benner, Senior Attorney

From: Sonny Conder, Principal Regional Planner
Karen Hohndel, Associate GIS Specialist

Subject: Valuation Report on the Nick Stearns Measure 37 Claim

Conclusion:

Per your request we have conducted a valuation analysis of the Nick Stearns Measure 37 Claim. We conclude that the Metro action of including the property inside the UGB, designating it "Outer Neighborhood" and imposing a temporary 20 acre minimum lot size for development has not produced a material loss of value for the subject property[1]. On the contrary, compared to development in a rural residential setting on 5 acre lots, the action is more likely to have resulted in a material gain in property value.

Conceptual Understanding for Basis of Property Value Analysis:

We understand the present Measure 37 valuation problem to consist of making two property value estimates. These are:

1. Estimate the current market value of the property subject to the regulation which the claimant contends has reduced the value of his property.
2. Estimate the current market value of the property in the absence of that regulation, and with the zoning that applies following the waiver granted by Clackamas County.

Metro Ordinance No. 02-969B applied a set of new regulations to the claimant's property. First the ordinance brought claimant's property into the region's urban growth boundary, making the

[1] We use the term "material" in the accounting/auditing sense that given the statistical variability inherent in the data there is no difference between two measurements of land value.

property eligible for urban high-density development rather than rural low-density development. Second, the ordinance designated the property "Outer Neighborhood", the lower density residential designation in Metro's 2040 Growth Concept. Third the ordinance applied a temporary 20-acre minimum lot size to protect the status quo while local governments complete amendments to comprehensive plans to allow urban development. Within this overall framework any particular property may have a substantial range of housing types and lot sizes. Implicit in this design designation is the availability of urban level capital facilities including sanitary sewers, storm water retention and management, water distribution, streets, roads, parks and other infrastructure and services associated with urban living. All development is assumed to occur in compliance with all health and safety regulations.

The default land use is the Clackamas County designation of RRFF-5. This land use designation is a rural designation allowing one dwelling unit per 5 acres. All development under RRFF-5 must conform to applicable health and safety regulations. Most significant is that the reference default land use must be outside the present UGB in a rural setting. While seeming to be a subtle distinction, the requirement of a rural setting outside the UGB is conceptually pivotal to the valuation. To use RRFF-5 or equivalent land inside the UGB as a basis for valuation includes the property value increasing amenity effects of urban services and infrastructure. It is logically contradictory to argue that inclusion inside the UGB and designation of the land for urban purposes has reduced a property's value but to include those very effects in the estimate of the property value without the subject action.

Alternative Method of Computing Property Value Loss Resulting From Regulation

Estimating loss of property value using the usual appraisal method of "comparative sales" has been the subject of substantial criticism. Andrew Plantinga and William Jaeger[2], economists as OSU, have written papers pointing out that using the method of comparative sales does not compute the loss due to regulation. Rather the estimated "value loss" is actually the gain resulting from obtaining an exemption to the general rule. To better understand their arguments, we may think of the comparative sales method of determining an economic loss as equivalent to determining the value of issuing someone a special license or franchise to carry out an economically valuable function that others may not do. For instance, licenses to operate taxi cabs in New York are seldom issued and in great demand. As a result the license itself has acquired substantial economic value. An example closer to home is the value of an Oregon Liquor License prior to more liberal issuing standards in the 80's. In the 1950's through roughly the

[2] Andrew Plantinga, *Measuring Compensation Under Measure 37: An Economist's Perspective*, Dec. 2004, 15 pages. (Available at OSU Department of Agricultural and Resource Economics, URL: plantinga@oregonstate.edu). William K. Jaeger, *The Effects of Land Use Regulations of Land Prices*, Oct. 2005, 38 pages. (Available at OSU Department of Agricultural and Resource Economics, URL: wjaeger@oregonstate.edu).
Also: William K Jaeger, *The Effects of Land-Use Regulations on Property Values*, **Environmental Law,** Vol. 36:105, pp. 105 – 127, Andrew J. Plantinga, *et. al.*, *The effects of potential land development on agricultural land prices*, **Journal of Urban Economics,** 52, (2002), pp. 561 – 581. and Sonny Conder and Karen Hohndel, *Measure 37: Compensating wipeouts or insuring windfalls?,* **Oregon Planners' Journal,**
Vol. 23, No 1. Dec. – Jan 2005. pp. 6 – 9.

70's, an Oregon Liquor License for a restaurant or bar vastly increased the property value of the establishment that had one. Plantinga and Jaeger argue that the value of the property hinges on scarcity resulting from regulation. If everyone had a taxi cab or liquor license, they would have no value. From an economic perspective, using a method that really measures value gained from regulation is not the same as determining economic loss resulting from regulation.

Plantinga and Jaeger go on to suggest an economically appropriate measure of loss resulting from subsequent land use regulation. Their method is grounded in the well established and tested Theory of Land Rent. Simplified a bit the Theory of Land Rent holds that the value of land at any particular time is the future net profit from the land used in its most efficient allowable use. The market also adjusts (discount factor) this value to account for time and uncertainty as to future uses. What this means is that the original sales price incorporates future expectations about how the land might be used. If we take the original sales price and bring it up to the current date by using an appropriate price index, we are able to measure in today's prices what the land was worth when it was purchased under the original regulatory requirements.

The above procedure yields an estimate of the original value of the property in today's dollars. We can then compare that estimate to the market worth of the property with the new regulation. If the adjusted original estimate exceeds the present market value, then the owner has experienced a loss. If the adjusted original estimate is equal to or lower than the property value under the new regulation, then the owner has experienced no loss.

This method allows a consistent computation of property loss due to subsequent regulatory changes. At the same time it avoids awarding particular property owners a bonus that was not anticipated in the original purchase price. Owners are compensated for what they lost; but they are not awarded an extra benefit owing to unanticipated growth, infrastructure investment or regulatory changes.

Since the Plantinga-Jaeger approach represents a consistent and fair method of evaluating economic loss to property resulting from regulation, we are also valuing property claims according to their suggested method.

Property Valuation Analysis Procedure:

Our property valuation analysis procedure consists of the following steps.

- Briefly describe the property and make a prudent assessment of development limitations to establish a likely range of residential capacity under both "Outer Neighborhood" and RRFF-5 designations assuming health and safety regulations are enforced.
- Based on recent sales (2005) of lots and existing properties inside the Oregon City expansion area determine the current (2006) value of the property with a reasonable range of "Outer Neighborhood" development configurations including a 5 year discount factor for lag time in service provision.

- Based on recent sales (2005) of property in a buffer zone extending 1 mile outside the present UGB within Clackamas County determine the value of residential property on lots of 2.5 to 7.5 acres in size. This procedure establishes a reasonable range of values for residential properties of RRFF-5 configuration in a rural setting. Include a 2 year discount factor for lag time in development.
- Provide an alternative valuation of the Nick Stearns property based on an adjustment to original sales value that has been advocated by OSU Economists Andrew Plantinga and William Jaeger.
- Evaluate the lot value and home value comparables submitted as evidence with the Nick Stearns Measure – 37 claim.
- Provide and compare estimates of the value of the subject property as of 2006 with Metro's "Outer Neighborhood" designation versus Clackamas County's RRFF-5 designation.

Nick Stearns Property Description:

The subject property consists of 21.4 acres immediately east of S. South End Road at approximately the 199th block south of Oregon City. Clackamas County Assessor data show the property as two tax lots; one of 18.6 acres and a second of 2.8 acres for a total of 21.4 acres in all. A residential structure and outbuildings are located on the western portion of the property. Assessor appraised value as of 2005 for both lots amounts to $422,988 with the improvement accounting for $133,290 and the land - $289,698. Assessor data show the home being constructed in 1965. Data submitted with the claim indicate the property was conveyed as a Deed of Trust in 1998 for $10. Value of the property at the time was estimated at $300,000.

Visual inspection from S. South End Road and air photo inspection as well as relevant GIS data indicate that portions of the property pose substantial limitations to development; the full extent of which would require sanitation, geotechnical and civil engineering professionals to fully delimit and elucidate. The salient limiting feature for development on the property is the 263 foot wide high voltage utility line easement and 2 sets of utility lines that run east-west through the upper 1/3 of the property. These are high voltage lines that allow no building underneath. Snapping, crackling and humming of the lines was audible from the road. Besides limiting the land available for development, the lines constitute substantial disamenities to high value residential development.

The south-western ¼ of the property also has a fairly steep slope that will also limit development to some extent. The remainder of the property is fairly flat farm and forestry land. Surrounding development, particularly that in Oregon City within ½ mile does not appear limited by drainage or topographic features.

Again, it is not in our professional capacity to assert with authority any definitive estimate of what the site limitations are; but rather to reflect what any prudent property investor must consider when pricing raw land. This holds true for both Metro's "Outer Neighborhood" and the default use of RRFF-5.

Dwelling Unit Capacity Estimates:

To simplify our capacity estimates we assume that the existing residential structure is retained on the property. Accordingly, we reduce the property available for development by 1.4 acres to 20[3]. Should the property be developed in a configuration consistent with Metro's Outer Neighborhood designation we estimate that anywhere from 10 acres (47%) to 12.5 acres (58%) of the 21.4 acres would be useable. Under RRFF-5 zoning it may be conceivable (septic tank and road restrictions not withstanding) to use 20 acres for development by including the easement as part of the 5 acre lot and siting the dwelling unit outside the easement. In this case we expect the property to yield 3 – 4 buildable 5 acre lots. Since all land within the easement is highly restricted in use, 5 acre lots in this configuration are necessarily worth much less than lots that are subject to owner discretion.

Based on similar terrain and developments in the UGB within Oregon City we calculate that with Outer Neighborhood given a range of lot sizes of 4,000 – 10,000 sq. ft., 5 to 6.5 lots per acre could be constructed on the buildable acreage. This assumes urban level infrastructure and design flexibility in lot shape and structure placement on the lot.

For the RRFF-5 designation we assume by definition 1 unit per 5 acres.
In sum we expect the property with Metro's Outer Neighborhood designation to yield 50 (5 times 10 acres) to 81 (6.5 times 12.5 acres) residential lots ranging from 4,000 to 10,000 sq. ft. in size. The RRFF-5 designation yields 3 – 4 buildable rural lots of 5 acres in size.

Current Value Estimate of "Outer Neighborhood" Buildable Lots in Oregon City Expansion Area:

In order to establish a reasonable range of lot values for developing urban areas with infrastructure and nearby urban services, we evaluated all recent sales (year 2005) of land and lots within the Oregon City UGB expansion area. We examined 154 SFR properties within the entire expansion area. Many of these are properties that remain substantially rural in character without full urban services. Relevant summary results are in Table 1 below.

[3] We point out that for RRFF-5 this is not presently feasible since it would require establishing a 1.6 acre tax lot for the existing residential structure. Most realistically, the RRFF-5 designation would yield a 6.6 acre lot with the existing house and 3 5 acre lots.

Table 1: Summary Property Value Data – Oregon City Area Residential Sales

Average Lot Size:	.73 acres
Median Lot Size:	0.46 acres
Average Lot Value:	$99,000
Median Lot Value:	$92,300
Average Total Prop.	$237,000
Median Total Prop.	$220,000
Average House Size:	1,745 Sq. Ft.
Median House Size:	1,536 Sq. Ft.

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When we adjust for lot size, availability of full urban services, and the presence of the utility lines on the property, the data support a lot value range of $75,000 to $90,000 per buildable lot in 2005 dollars for “Outer Neighborhood” type development on the subject property. This value range encompasses a range of housing types and neighborhood conditions.

Current Value Estimate of “RRFF-5 Buildable Lots” in the 1 Mile Buffer Area Outside the UGB:

To establish the value range for “RRFF-5” size lots within the Clackamas rural area we selected all residential properties that sold in 2004 and 2005 within the 1 mile buffer zone with a lot size of 2.5 to 7.5 acres. These comprised 177 properties and their summary statistics are included below in Table 2.

Table 2: Summary Property Value Data – Clackamas Rural Residential (“RRFF-5”)

Average Lot Size:	4.45 acres
Median Lot Size:	4.56 acres
Average Lot Value:	$233,200
Median Lot Value:	$204,000
Average Total Prop.	$510,200
Median Total Prop.	$421,800
Average House Size:	3,500 Sq. Ft.
Median House Size:	3,350 Sq. Ft

For purposes of valuation we also need adjust for the presence of the utility lines. According we are assuming a range of $175,000 to $225,000 per buildable 5 acre lot for RRFF-5 on the subject property.

Alternative Valuation of Nick Stearns Property Using Method Suggested by Plantinga and Jaeger.

OSU economists Andrew Plantinga and William Jaeger have challenged the "comparable sales" approach of traditional appraisal methods. They have pointed out that it really measures the value obtained by an exception to the current rule; rather than a measure of economic loss suffered as a result of government land use regulation. As an alternative test they propose indexing the price that the property was purchased for to the present time using an appropriate index of property value, investment or consumer price change. Explicit to this suggestion is the Theory of Land Rent which holds that the price paid for land capitalizes reasonable expectations about its future use. If the initial purchase price anticipated a more intense future use, the indexed price should exceed the current market price under the revised land use regulations. If the revised land use regulations are consistent with or exceed the expectations contained in the original purchase price, then the current market price will equal or exceed the indexed price.

Accordingly, we have computed from published sources four value change indices for the period 1998 through 2005. We have also converted the 1998 Stearns' property transfer of $300,000 to value per acre. Since we are retaining the residential structure we have reduced the value by 36.0% (improvement plus 1.4 acre land share in 2005) and divided the result by 20 acres (The amount of available to the market). This allows us to look at the value of the raw land alone and not add in the complication of the existing residential structure. In 1998 the value of the 20.0 acres of raw land amounted to $9,600 per acre. Table 3 below converts that value per acre to current 2005 dollars using 4 different value change indices.

Table 3: Nick Stearns' Property Value per Acre Given Market Expectations of Purchase Price (Plantinga-Jaeger Method)

Index[4]	98 Value	2005 Value	Ratio	Value Per Acre 2005 $
Port/Van CPI	167.1	197.7	1.18	$11,320
House Value Index	156.9	241.5	1.54	$14,784
Lot Value Index	40.0	95.0	2.38	$22,848
S&P500 Stock Idx	1035	1181.4	1.14	$10,944

All indices except the S & P 500 stock price index are for the Portland Vancouver area. The lot price index uses East Portland values for 1998 and Oregon City values for year 2005. The S & P index is the raw price index; not the real price index which is adjusted for inflation.

[4] The Portland – Vancouver Consumer Price Index is for all urban consumers from the Metro Regional Data Book, p. 73. The House Value Index is from the Metro Regional Data Book, p. 95. The Lot Value Index is taken from The Real Estate Report of Metropolitan Portland, Vol. 69, (Autumn 1989) and from Metro RLIS data on taxlots. The S&P 500 Stock Index is from Microsoft Internet Explorer, Wikipedia, the free encyclopedia, S&P500 URL: http://en.wikipedia.org

Depending on one's philosophy of an appropriate rate of investment return the Stearns property raw land value per acre should vary between $11,000 and $23,000.

Evaluation of Nick Stearns' Claim of Comparable Properties

The basis for the Stearns' property value loss claim rests on a market value estimate of $250,000 per developed, ready to build lot assuming 3 buildable lots plus the existing residence are available on the property. To support the estimate of $250,000 per buildable lot no comparables are submitted.

Nick Stearns' Property Values Compared

Given the data developed in the previous Tables we may now summarize our estimates of the value per acre in 2006 for the Stearns' property in its present location. To do so we have followed the procedure below.

1. Simplify the calculation by subtracting out the existing dwelling unit and 1.4 acres it occupies so we have 20 acres of raw land without services.
2. Assume a cost of providing water, sanitary sewer, drainage, streets and other on site utilities plus SDC's of $50,000 per buildable lot for both Outer Neighborhood and RRFF-5.
3. Account for the value of time until the property could actually be developed. In the case of Outer Neighborhood we assume 5 years before development; so we discounted the value at 6.5% per year for 5 years. For RRFF-5 we assume development within 2 years; so we discounted the value at 6.5% per year for 2 years.
4. Convert the resultant values into the estimate of what a prudent investor would pay in 2006 per acre for the raw land.

Table 4 below depicts the results for low and high range assumptions for both Outer Neighborhood and RRFF-5.

Table 4: Comparison of Estimated Market Value of Raw Land for Outer Neighborhood and RRFF-5 Land Uses

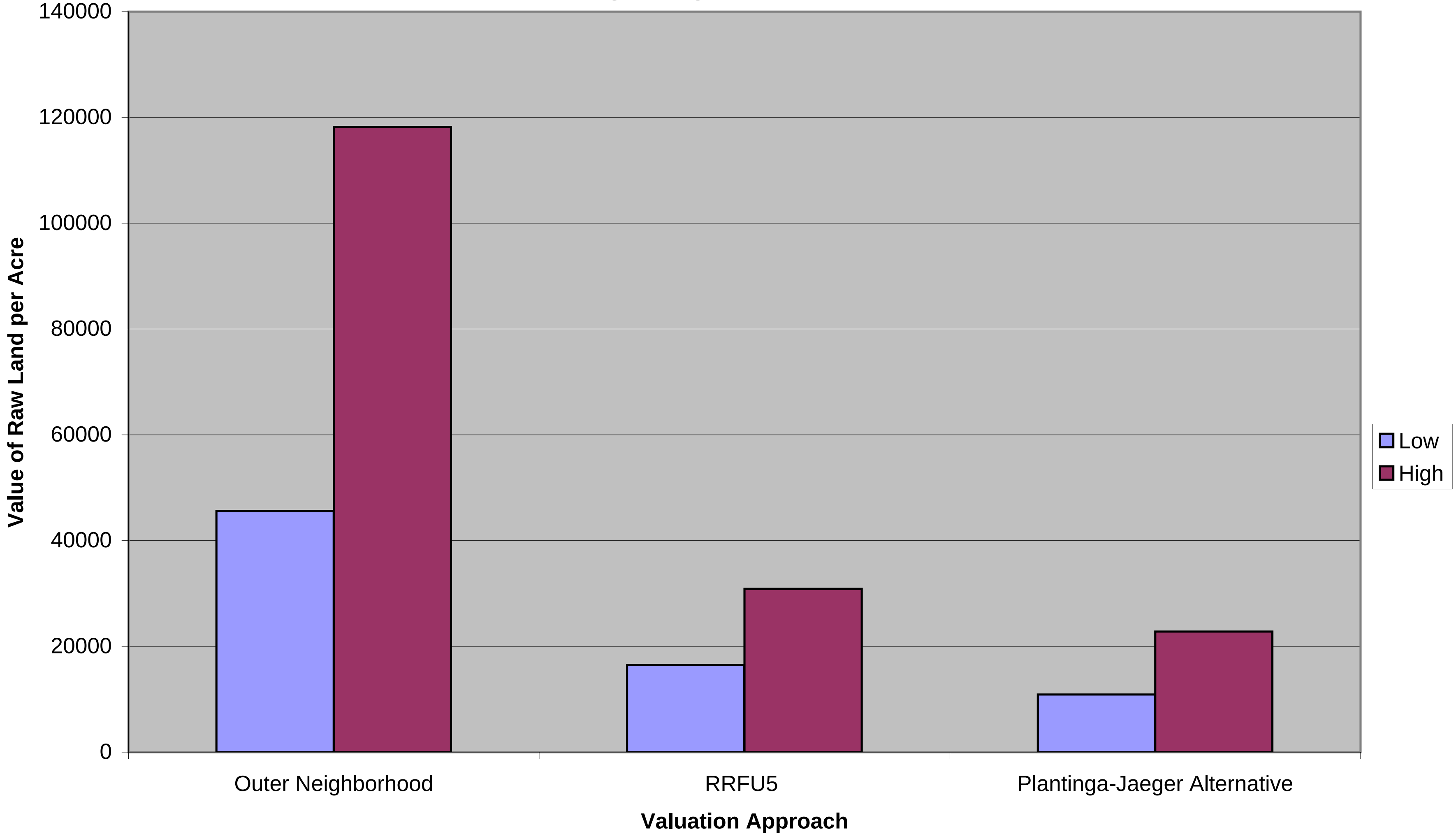
Outer Neighborhood	
Low Yield:	50 DU
Low Range Lot Value:	$75,000
Development Cost per Lot:	$50,000
Net Raw Land per Lot:	$25,000
Total Raw Land Value (50x25,000):	$1,250,000
Current Market Value per acre for 20 acres	
Discounted 5 years:	$45,600
High Yield:	81 DU
High Range Lot Value:	$90,000
Development Cost per Lot:	$50,000
Net Raw Land per Lot:	$40,000
Total Raw Land Value (81x40,000):	$3,240,000
Current Market Value per acre for 20 acres	
Discounted 5 years:	$118,200
RRFF-5	
Low Yield:	3 DU
Low Range Lot Value:	$175,000
Development Cost per Lot:	$50,000
Net Raw Land per Lot:	$125,000
Total Raw Land Value (3x125,000):	$375,000
Current Market Value per acre for 20 acres	
Discounted 2 years:	$16,500
High Yield:	4 DU
High Range Lot Value:	$225,000
Development Cost per Lot:	$50,000
Net Raw Land per Lot:	$175,000
Total Raw Land Value (4x175,000):	$700,000
Current Market Value per acre for 20 acres	
Discounted 2 years:	$30,900

Figure A attached depicts the calculations in Table 4. We estimate the current raw land value of the Stearns' property with Outer Neighborhood designation to range from $45,600 per acre to $118,200 per acre. The same property used as RRFF-5 in a rural setting would yield $16,500 to $30,900 per acre. In other words the most optimistic RRFF-5 valuation does not equal the most pessimistic Outer Neighborhood valuation. Given these results we would conclude that the

Outer Neighborhood designation has not reduced the value of the property; quite the contrary it has most likely increased the value.

Moreover, in terms of establishing economic loss the land values per acre established using the Plantinga-Jaeger method range from $11,000 to $23,000 per acre. The highest Plantinga – Jaeger estimate falls midway between the lowest and highest “comparative sales” estimate of RRFF-5 per acre. Clearly, under no circumstances has any regulatory change to the Stearns’ property reduced its value. Again, the contrary is the case. Growth, infrastructure investment and regulation necessary to orderly growth have produced increases in property values well in excess of any alternative investment for the Stearns’
property.

Figure A: Current Market Value per Acre: Low and High with Outer Neighborhood, RRFF5 and Plantinga-Jaeger Value Method

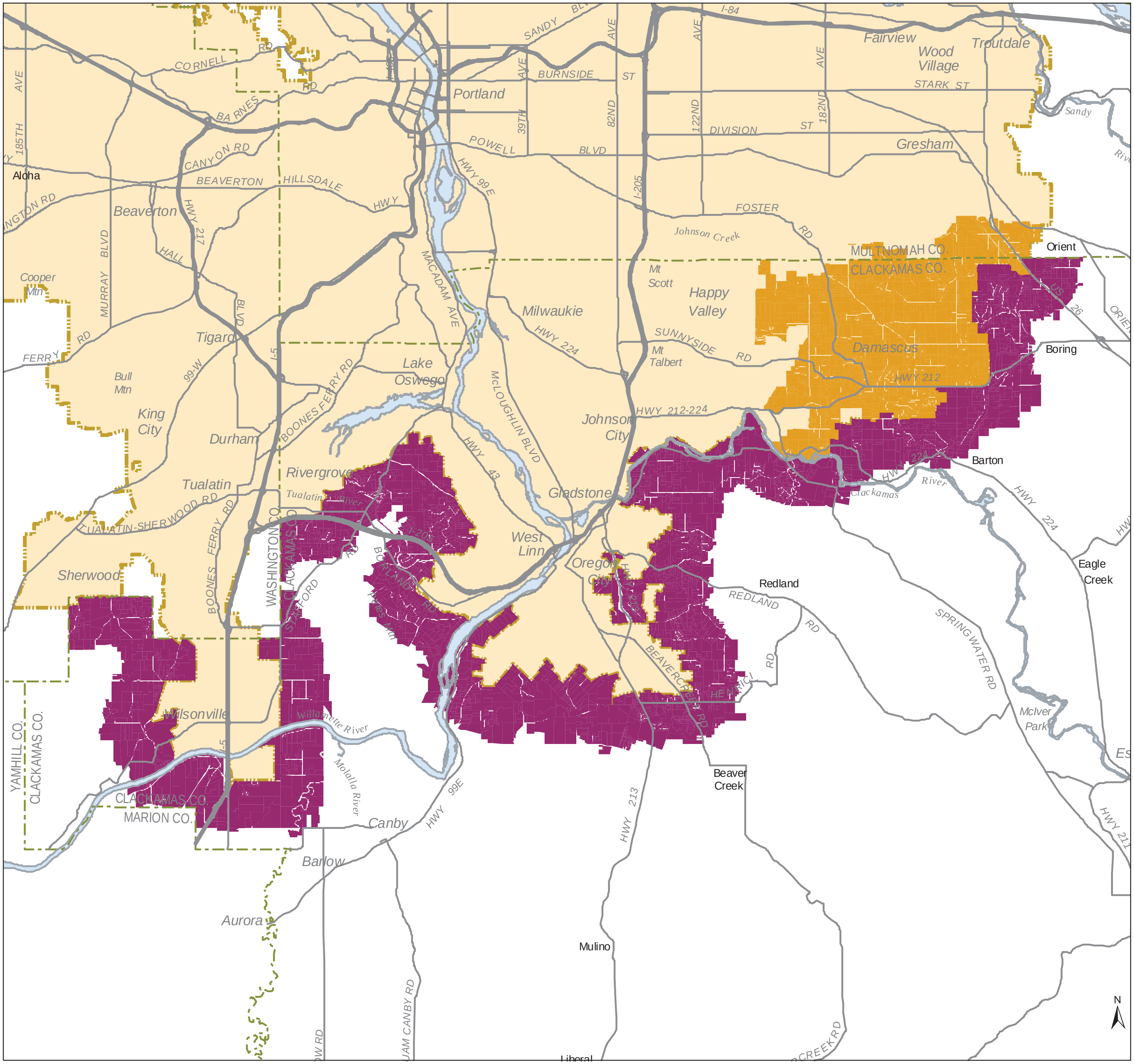


R L I S

REGIONAL LAND INFORMATION SYSTEM

Council Order #06-003
Attachment 3

Sample Area of 2004-2005 Sales Data for Damascus UGB Expansion Area and One Mile Buffer, Clackamas County, OR

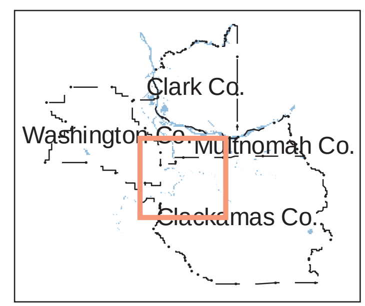


Damascas UGB Expansion Area
One Mile Buffer
County Line
Inside Metro UGB

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

1 inch equals 3.31 miles

0 1 2 Miles



Location Map

METRO

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Project Date: Apr 28, 2006 Plot time: May 11, 2006 J:\hohndel\06110_M37Stearns_Maps\SampleAreaMap.mxd